IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLAGTE JURISDICTION

APPEAL FROM ORDER NO. 467 OF 2006.
IN
NOTICE OF MOTION NO. 1990 OF 2006
IN
B.C.C.C.L.C. SUIT NO. 2338 OF 2006
WITH
CIVIL APPLICATION NO.573 OF 2006

Prakash Harischandra Muranjan ..Appellant.
V/s
Mumbai Metropolitan Region
And another ..Respondents.

Mr. B.D. Joshi with Mr. V.S. Paradkar for the appellant.

Mr. R.M. Sawant for respondent Nos. 1 and 2.

CORAM : A.M. KHANWILKAR, J.
DATE : 18TH JULY, 2006.

p.c.

. Heard Counsel for the parties.

2. Admit.

3. Mr. Sawant waives notice for respondents. As short question is involved appeal is taken up for hearing forthwith by consent. This appeal from order is directed against the judgment and order passed by the trial Court rejecting the prayer for ad interim relief

during the pendency of notice of motion, dated 19th May, 2006. For the nature of order that I propose to pass, it is not necessary to advert to the factual aspect which led to filing of the suit. Suffice to observe that the case of the appellant is that the suit structure is in existence since 1955. The document to support that position is placed on record in the form of assessment bill. The document such as property card is also produced on record. It does appears that some structure was existing on the suit site since 1955 i.e. C.I. Shed. May be that structure has undergone change in the form; besides the area of the structure, must have also changed. All these matters will have to be considered at the final hearing of the notice of motion. For the present it is sufficient to observe the documents produced by the appellant warrants granting of ad interim relief so as to preserve the structure till the disposal of the notice of motion.

2. Even while allowing this appeal, I have no hesitation in rejecting the argument of the appellant that, since the case of the respondent authority is that the suit structure is falling within the road line, the respondents are obliged to acquire the property, if so

advised and take action in respect of the suit structure only thereafter. In my opinion, the remedy of taking action in respect of the structure which are falling within the road line is an independent remedy. It is open to the authority to take recourse to either of the remedy. In the present case, in the first instance the authority thought it appropriate to take action on the basis that the suit structure is unauthorised structure and not protected by any Government policy. It is open to the respondent authority to take that action to its logical end. It is also open to the respondent authority to initiate action in respect of the suit structure on the ground that it is falling within the road line, independently, even during the pendency of the previous proceedings.

3. For the reasons already recorded earlier, in my opinion, this appeal is allowed by setting aside the impugned order. Instead, ad interim relief is granted in favour of the appellant during the pendency of the notice of motion subject to the right of the Respondent to take recourse to any other action as may be permissible by law. The trial Court shall decide the notice of motion expeditiously preferably by the end of

August 2006. This observation is made on the assurances given by the parties through Counsel that the pleadings in the notice of motion will be completed by 31st July, 2006. The parties shall appear before the trial Court on 1st of August, 2006 on which date the trial Court shall fix the appropriate date for hearing of the notice of motion or may proceed to hear the notice of motion on the same date, as may be advised. The notice of motion shall be decided in accordance with the law and shall not be influenced by the observations made in this order.

4. Appeal as well as civil application disposed of accordingly with no order as to costs.

(A.M. KHANWILKAR, J.)